

WILLIAM J. GOINES (SBN 061290)
KAREN ROSENTHAL (SBN 209419)
CINDY HAMILTON (SBN 217951)
GREENBERG TRAURIG, LLP
1900 University Avenue, Fifth Floor
East Palo Alto, CA 94303
Telephone: (650) 328-8500
Facsimile: (650) 328-8508
Email: goinesw@gtlaw.com
rosenthalk@gtlaw.com
hamiltonc@gtlaw.com

JEREMY A. MEIER (SBN 139849)
GREENBERG TRAURIG, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814-3938
Telephone: (916) 442-1111
Facsimile: (916) 448-1709
Email: meierj@gtlaw.com

11 Attorneys for Defendants Polo Ralph Lauren
12 Corporation; Polo Retail, LLC; Polo Ralph
13 Lauren Corporation, doing business in California
as Polo Retail Corporation; and Fashions Outlet
of America, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANN OTSUKA, an individual and on behalf of all others similarly situated; JANIS KEEFE, an individual; CORINNE PHIPPS, an individual; JUSTIN KISER, an individual; and RENEE DAVIS,

Plaintiff,

V.

POLO RALPH LAUREN CORPORATION;
POLO RETAIL, LLC; POLO RALPH
LAUREN CORPORATION, DOING
BUSINESS IN CALIFORNIA AS POLO
RETAIL CORPORATION; AND
FASHIONS OUTLET OF AMERICA, INC.

Defendants.

Case No. C07-02780 SI

DEFENDANTS' [PROPOSED] SPECIAL VERDICT FORMS

Pretrial: March 2, 2010

Time: 3:30 p.m.

Dept.: Courtroom 10, 19th Floor

Judge: Hon. Susan Illston

Trial Date: March 15, 2010

1 Defendants Polo Ralph Lauren Corporation; Polo Retail, LLC; Polo Ralph Lauren
2 Corporation, doing business in California as Polo Retail Corporation; and Fashions Outlet of
3 America, Inc. ("Polo"), submit the attached proposed Special Verdict Forms. Polo reserves the right
4 to amend, supplement and submit additional Special Verdict Forms based on further trial preparation
5 and developments during trial.

6
7 Dated: February 26, 2010.

GREENBERG TRAURIG, LLP

8
9 By: /s/ William J. Goines

10 William J. Goines
11 Jeremy A. Meier
12 Cindy Hamilton
13 Karen Rosenthal

14 Attorneys for Defendants Polo Ralph Lauren
15 Corporation; Polo Retail, LLC; Polo Ralph
16 Lauren Corporation, doing business in California
17 as Polo Retail Corporation; and Fashions Outlet
18 of America, Inc.

First Cause of Action - FRAUD
VF-1900. Intentional Misrepresentation (Modified)

Verdict Form
No 1

Request by Plaintiff		Request by Defendant	X	Requested by	
Given as Proposed		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					Honorable Susan Illston

Verdict Form
No 1

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term or standard that appears in the questions below.

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

1. Did Polo make a false representation of an important fact to each Misclassification Subclass member, namely that Polo intended to perform overtime reconciliation annually to ensure each Misclassification Subclass member received all overtime owed?

____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did Polo know that the representation was false, or did Polo make the representation recklessly and without regard for its truth?

____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If any of you answered no, stop here, answer no further questions, and have the presiding

Verdict Form
No. 1

juror sign and date this form.

3. Did Polo intend that each Misclassification Subclass member rely on the representation in order to get the Misclassification Subclass member to accept employment with Polo?

Yes No

If your answer to question 3 is yes, then answer question 4. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did each Misclassification Subclass member reasonably rely on the representation in deciding to accept employment with Polo?

Yes No

If your answer to question 4 is yes, then answer question 5. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was each Misclassification Subclass member harmed by the misrepresentation?

Yes No

If your answer to question 5 is yes, then answer question 6. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was each Misclassification Subclass member's reliance on Polo's representation a substantial factor in causing them harm?

Yes No

If your answer to question 6 is yes, then answer question 7. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are each Misclassification Subclass member's damages?

a. Amount of unpaid overtime wages

\$

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated:

Verdict Form

No 1

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Second Cause of Action - VIOLATIONS OF LABOR CODE 221
Bona Fide Commission Sales Programs (Arrears Program)

Verdict Form
No 2

Request by Plaintiff		Request by Defendant	X	Requested by	
Given as Proposed		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					Honorable Susan Illston

Verdict Form
No 2

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term or standard that appears in the questions below.

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

1. Did Polo impermissibly recover earned wages from each Arrears Subclass member through the Arrears Program?

____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. What is the amount of wages owed? \$ _____

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Third Cause of Action -- FAILURE TO PAY PREMIUM O/T WAGES
VF-2702. Nonpayment of Overtime Compensation (Cal. Lab. Code § 1194) (Modified)

Verdict Form
No 3

Request by Plaintiff		Request by Defendant	<input checked="" type="checkbox"/> X	Requested by	
Given as Proposed		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					Honorable Susan Illston

Verdict Form
No 3

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term or standard that appears in the questions below.

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

1. Did each Plaintiff perform work for Polo?

 Yes No

If your answer to question 1 is yes, then answer question 2. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was each Plaintiff paid at a rate lower than the legal overtime compensation rate for any overtime hours that each Plaintiff worked for Polo?

 Yes No

If your answer to question 2 is yes, then answer question 3. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Verdict Form
No 3

3. Were each Plaintiff's earnings less than one and one-half (1-1/2) times the minimum wage, as determined by the reconciliation of wages and commissions for one year?

If your answer to question 3 is yes, then answer question 4. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Yes No

4. Was less than half of each Plaintiff's compensation represented by commissions, as determined by the reconciliation of wages and commissions for one year?

If your answer to question 4 is yes, then answer question 5. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Yes No

5. What is the amount of wages owed? \$_____

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Other - Nonpayment of Wages For Off-the-Clock TimeVerdict Form
No 4

Request by Plaintiff		Request by Defendant	X	Requested by	
Given as Proposed		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					Honorable Susan Illston

Verdict Form
No 4

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term or standard that appears in the questions below.

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

1. Did each Plaintiff perform work for Polo while off-the-clock, while not engaged in personal activities at the time?

 Yes No

If your answer to question 1 is yes, then answer question 2. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did Polo fail to pay each Plaintiff for the off-the-clock work?

 Yes No

If your answer to question 2 is yes, then answer question 3. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Verdict Form
No 4

3. Was Polo obligated to compensate each Plaintiff for off-the-clock work, considering the practical administrative difficulty of recording the additional off-the-clock work or the total amount of off-the-clock time for each Plaintiff or the regularity of the additional off-the-clock work for each Plaintiff?

Yes No

If your answer to question 3 is yes, then answer question 4. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are the amount of unpaid wages? \$ _____

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Fifth Cause of Action (A) -- Waiting Time Penalty
VF-2703. Waiting-Time Penalty for Nonpayment of Wages (Lab. Code, §§ 203) (Modified)
For Off-The-Clock Time

Verdict Form
No 5

Request by Plaintiff		Request by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Proposed		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					Honorable Susan Illston

Verdict Form
No 5

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term or standard that appears in the questions below.

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

1. Did you determine that each Plaintiff was entitled to unpaid wages for off-the-clock work in Verdict Form 4?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did each Plaintiff terminate employment with Polo?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Verdict Form
No 5

3. Did Polo fail to pay the full amount of wages for off-the-clock work earned by each Plaintiff on his/her last day of employment?

Yes No

If your answer to question 3 is yes, then answer question 4. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was Polo's failure to pay the full amount of wages for off-the-clock work due upon termination willful -- in other words, did Polo intentionally fail or refuse to pay wages and there was no "good faith dispute" as to whether wages for off-the-clock work were owed?

Yes No

If your answer to question 3 is yes, then answer question 4. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. For how many calendar days following each Plaintiff's last day of employment did Polo willfully fail to pay the full amount of each Plaintiff's wages? _____ days.

Answer question 6.

6. What was each Plaintiff's daily wage rate at the time his/her employment ended?

\$ _____ per day.

Answer question 7.

7. How many class members were harmed by the failure to pay? _____

Answer question 8.

8. What is the total amount of penalty owed to the class?

a. Number of calendar days (question #5) _____

b. Each Plaintiff's daily wage rate (question #6) \$ _____

c. Number of class members harmed by the failure to pay (question #7) _____

TOTAL = a. x b. x c. = \$ _____

Verdict Form
No 5

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Fifth Cause of Action (B) -- Waiting Time Penalty
VF-2703. Waiting-Time Penalty for Nonpayment of Wages (Lab. Code, §§ 203) (Modified)
For Overtime Compensation

Verdict Form
No 6

Request by Plaintiff		Request by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Proposed		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					Honorable Susan Illston

Verdict Form
No 6

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term or standard that appears in the questions below.

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

1. Did you determine that each Plaintiff was entitled to unpaid wages for overtime work in Verdict Form 3?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did you determine that each Plaintiff was not entitled to a waiting-time penalty for off-the-clock time in Verdict Form 5?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Verdict Form
No 6

3. Did each Plaintiff terminate employment with Polo?

Yes No

If your answer to question 3 is yes, then answer question 4. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did Polo fail to pay the full amount of overtime wages owed to each Plaintiff on his/her last day of employment?

Yes No

If your answer to question 4 is yes, then answer question 5. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was Polo's failure to pay the full amount of wages for overtime work due upon termination willful -- in other words, did Polo intentionally fail or refuse to pay wages and there was no "good faith dispute" as to whether wages for overtime work were owed?

Yes No

If your answer to question 5 is yes, then answer question 6. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. For how many calendar days following each Plaintiff's last day of employment did Polo willfully fail to pay the full amount of each Plaintiff's wages? _____ days.

Answer question 7.

7. What was each Plaintiff's daily wage rate at the time his/her employment ended?

\$ _____ per day.

8. How many class members were harmed by the failure to pay? _____

Answer question 9.

Verdict Form
No 6

9. What is the total amount of penalty owed to the class?

a. Number of calendar days (question #6) _____

b. Each Plaintiff's daily wage rate (question #7) \$ _____

c. Number of class members harmed by the failure to pay (question #8) _____

TOTAL = a. x b. x c. = \$ _____

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Fifth Cause of Action (C) -- Waiting Time Penalty
VF-2703. Waiting-Time Penalty for Nonpayment of Wages (Lab. Code, §§ 203) (Modified)
For Bona Fide Commissions Program (Arrears Program)

Verdict Form
No 7

Request by Plaintiff		Request by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Proposed		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					Honorable Susan Illston

Verdict Form
No 7

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term or standard that appears in the questions below.

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

1. Did you determine that each Arrears Subclass member was entitled to unpaid wages under the Arrears Program in Verdict Form 2?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did you determine that each Plaintiff was not entitled to a waiting-time penalty for off-the-clock time in Verdict Form 5?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Verdict Form
No 7

3. Did each Arrears Subclass member terminate employment with Polo?

Yes No

If your answer to question 3 is yes, then answer question 4. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did Polo fail to pay the full amount of wages earned by each Arrears Subclass member under the Arrears Program on his/her last day of employment?

Yes No

If your answer to question 4 is yes, then answer question 5. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was Polo's failure to pay the full amount of wages due under the bona fide commissions program (Arrears Program) willful -- in other words, did Polo intentionally fail or refuse to pay wages and there was no "good faith dispute" as to whether wages were owed under the Arrears Program?

Yes No

If your answer to question 5 is yes, then answer question 6. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. For how many calendar days following each Arrears Subclass member's last day of employment did Polo willfully fail to pay the full amount of each Arrears Subclass member's wages? _____ days.

Answer question 7.

7. What was each Arrears Subclass member's daily wage rate at the time his/her employment ended?

\$ _____ per day.

Answer question 8.

8. How many class members were harmed by the failure to pay? _____

Answer question 9.

Verdict Form
No 7

9. What is the total amount of penalty owed to the class?

a. Number of calendar days (question #6) _____

b. Each Arrears Subclass member's daily wage rate (question #7)
\$ _____

c. Number of class members harmed by the failure to pay (question #8)

TOTAL = a. x b. x c. = \$ _____

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Sixth Cause of Action -- Record-Keeping Penalty (Cal. Lab. Code § 226)
Record-Keeping Penalty For Failure to Maintain Accurate Pay Records

Verdict Form
No 8

Request by Plaintiff		Request by Defendant	X	Requested by	
Given as Proposed		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					Honorable Susan Illston

Verdict Form
No 8

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term or standard that appears in the questions below.

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

1. Did Polo fail to furnish accurate pay records, i.e., an itemized statement in writing showing gross wages earned, total hours worked, all deductions, net wages earned, dates of the period paid, name and social security number of the employee, name and legal address of the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, for each Plaintiff?

 Yes No

If your answer to question 1 is yes, then answer question 2. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Verdict Form
No 8

2. Was Polo's failure to furnish accurate pay records knowing and intentional -- in other words, there was no "good faith dispute" as to whether the records accurately included the total hours worked?

Yes No

If your answer to question 2 is yes, then answer question 3. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was each Plaintiff injured by Polo's failure to furnish accurate pay records?

Yes No

If your answer to question 3 is yes, then answer question 4. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What is the total amount of penalty owed to the class?

An employee suffering injury as a result of a knowing and intentional failure by an employer to provide an accurate pay record is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

a. Actual Damages for each Plaintiff \$ _____

b. 1 [Initial pay period] x \$50 = \$ _____

c. _____ # of subsequent pay periods Polo failed to furnish accurate pay records x \$100 = \$ _____

d. Potential penalty (b. + c.) = \$ _____

e. Total penalty for each Plaintiff (greater of a., d., or \$4000) = \$ _____

f. Number of class members harmed by failure to furnish accurate pay record _____

TOTAL = e. x f. = \$ _____

Verdict Form

No 8

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Other - Punitive Damages

Verdict Form
No. 9

Request by Plaintiff		Request by Defendant	X	Requested by	
Given as Proposed		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					Honorable Susan Illston

Verdict Form
No. 9

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term or standard that appears in the questions below.

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

1. If the jury has found in favor of the Misclassification Subclass and against Polo on the claims for intentional misrepresentation, does the jury find by clear and convincing evidence that Polo so acted with malice, oppression, or in reckless disregard of each Misclassification Subclass member's rights?

Yes No

If your answer to question 1 is yes, then answer question 2. If any of you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. What amount of punitive damages, if any, do you award to each Misclassification Subclass member? \$ _____

Signed: _____
Presiding Juror

Dated:

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].